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February 5, 2002

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FEB 05 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BY HAND DELIVERY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
236 Massachusetts Avenue, N.E.
Suite 110
Washington, D.C. 20002

Re: Amendment of Section 73.606(b),
Table of Allotments, TV Broadcast Stations
(Green Bay, Wisconsin)
MM Docket No. 01-325/RM-10136

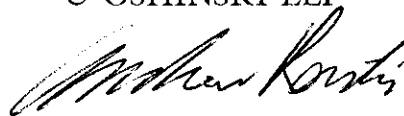
Dear Ms. Salas:

Transmitted herewith on behalf of Green Bay 44, L.L.C. are an original and four copies of its "Reply Comments" filed in the above-referenced proceeding.

Should any questions arise concerning this matter, please communicate directly with the undersigned.

Very truly yours,

DICKSTEIN SHAPIRO MORIN
& OSHINSKY LLP



Andrew S. Kersting
Counsel for
Green Bay 44, L.L.C.

Enclosure

cc: Certificate of Service (w/ encl.) (by hand)

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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FEB 05 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Amendment of Section 73.606(b),
Table of Allotments,
Television Broadcast Stations,
(Green Bay, Wisconsin)

MM Docket No. 01-325
RM-10136

To: Chief, Video Services Division

REPLY COMMENTS

Green Bay 44, L.L.C. (“Green Bay 44”), by counsel, and pursuant to Section 1.415 of the Commission’s rules, hereby submits its reply comments in response to the comments filed in the above-captioned proceeding by Television Wisconsin, Inc. (“WISC”), licensee of Station WISC-DT, Channel 50 (NTSC Channel 3), Madison, Wisconsin, and Ace TV, Inc. (“Ace”), licensee of Station WACY-DT, Channel 59 (NTSC Channel 32), Appleton, Wisconsin, both of which oppose the Commission’s proposal to allot NTSC Channel 50 to Green Bay, Wisconsin as an additional television service. *See Notice of Proposed Rule Making*, DA 01-2753 (released November 30, 2001) (“*NPRM*”). In support of these reply comments, the following is stated:

I. The Proposed Allotment of Channel 50 to Green Bay Will Not Cause Interference to Station WISC-DT.

WISC contends that the proposed allotment of NTSC Channel 50 to Green Bay, Wisconsin, would cause impermissible interference to the maximized facilities of Station WISC-DT, Madison, Wisconsin. As noted in its comments, WISC holds a construction permit (File No. BPCDT-19991027ABG) authorizing the construction of

“maximized” DTV facilities, which include a maximum effective radiated power (“ERP”) of 603 kilowatts and a radiation center above average terrain of 466 meters.¹ WISC Comments at 1-2. WISC alleges that the proposed allotment of Channel 50 to Green Bay would cause 0.8% interference to Station WISC-DT’s maximized facilities, which is above the 0.5% rounding tolerance. WISC therefore argues that the Commission’s proposal to allot Channel 50 to Green Bay should not be adopted.

As demonstrated in the attached engineering statement (appended hereto as Appendix A), the alleged interference to the maximized facilities of Station WISC-DT, Madison, can be reduced by lowering the ERP of the proposed NTSC facility at Green Bay and rotating the station’s directional antenna pattern. Specifically, by reducing the ERP of the proposed Green Bay NTSC facility by 3 dB and rotating the station’s directional antenna pattern so that the null is placed in the direction of Station WISC-DT, the interference to WISC-DT would be reduced to 0.483%, which is within the 0.5% rounding tolerance. *See* Appendix A, p. 1 and Exhibit FLR-1.

Moreover, as demonstrated by the attached Longley-Rice field strength contours (Appendix A, Exhibit LR-1), reducing the proposed station’s ERP and rotating its directional antenna pattern will still enable the Channel 50 NTSC facility to place an 80 dB contour over the entire community of Green Bay. Further, the city-grade, Grade A, and Grade B contours shown in the attached Exhibit LR-1 demonstrate that the power reduction and rotated directional antenna pattern will not have a negative impact on the proposed station’s ability to serve Green Bay and the surrounding area. *See* Appendix A, Exhibit LR-1. Therefore, despite WISC’s allegations, the proposed allotment of NTSC

¹ WISC filed a maximization application for Station WISC-DT on October 27, 1999. The application was not granted until more than a year later, on October 31, 2000. *See* WISC Comments at 2; File No. BPCDT-19991027ABG.

Channel 50 to Green Bay will not cause impermissible interference to Station WISC-DT, Madison, Wisconsin.

II. The Allotment of Channel 50 Should Not Be Deferred.

Ace does not allege that the proposed allotment of Channel 50 to Green Bay would pose any technical concerns with respect to Station WACY-DT, Channel 59, Appleton. Ace argues, however, that new NTSC stations should not be permitted to use in-core channels until the Commission has been determined that all existing stations in the local television market can be accommodated with an in-core digital channel.

Ace's comments present nothing more than an untimely policy argument that should have been raised in the context of the digital television rulemaking proceeding (MM Docket No. 87-268) where the Commission established the criteria by which pending proposals for new NTSC stations must protect DTV stations.² The Commission has repeatedly stated that it would seek to accommodate pending applications and allotment rulemaking petitions for new NTSC stations by giving the applicants and petitioners an opportunity to amend their respective proposals (to the extent necessary) after the DTV Table of Allotments was adopted.³ Indeed, in the DTV proceeding, the Commission stated as follows:

² See, e.g., *Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, Second Memorandum Opinion and Order on Reconsideration of the Fifth and Sixth Report and Orders*, 14 FCC Rcd 1348, 1367 ¶¶40-41 (1998).

³ *Id.* at 1367, ¶40. See also *Reallocation of Television Channels 60-69, the 746-806 MHz Band, Report and Order*, 12 FCC Rcd 22953, 22971 (1998); *Public Notice, Mass Media Bureau Announces Window Filing Opportunity for Certain Pending Applications and Allotment Petitions for New Analog TV Stations*, 14 FCC Rcd 19559, 19561 (released November 22, 1999), as extended by *Public Notice*, 15 FCC Rcd 4974 (2000) (extending window filing period to July 15, 2000).

We . . . believe it is desirable to provide applicants seeking to operate new NTSC stations in the freeze areas with options to pursue their applications wherever such options would not conflict with NTSC or DTV stations (including DTV allotments, authorized or requested increases in DTV allotment facilities and proposals for new or modified DTV allotments). In this regard, we are adopting the suggestion of several of the petitioners that we allow parties whose NTSC applications conflict with DTV stations . . . , to request a change in the NTSC channel they seek or to amend their applications to eliminate all such conflicts. We agree that where an alternate NTSC channel below channel 60 is available, it would provide a win-win solution in avoiding interference to DTV service and allowing the public to receive additional television service.

14 FCC Rcd at 1367 ¶40. As reflected above, the full Commission has made clear that it will process proposals for new NTSC stations where the proposal does not conflict with existing NTSC or DTV stations, including DTV allotments, authorized or pending proposals for increases in DTV facilities, and proposals for new or modified DTV allotments. *Id.* In this case, Ace does not even allege that the proposed allotment of Channel 50 to Green Bay would cause interference to Station WACY-DT's authorized facilities or any pending request to increase those facilities.

In an attempt to support its position, Ace makes reference to the pending allotment proposal of Station WFRV-DT, Green Bay, Wisconsin, which seeks to substitute DTV Channel 39 for its existing Channel 56 DTV allotment at Green Bay.⁴ However, despite its claimed desire to pursue an in-core DTV channel, Ace has not filed a rulemaking petition seeking to substitute an in-core DTV channel for its existing Channel 59 allotment, nor has it offered any explanation for why it has not sought an in-core digital allotment. Ace also failed to offer any justification for why a potential in-core DTV allotment proposal to be filed at some point in the future should have priority over a

⁴ See Ace Comments at 1; *Notice of Proposed Rule Making*, MM Docket No. 01-334, DA 01-2868 (released December 14, 2001).

proposal for a new NTSC station at Green Bay which has been pending before the FCC for nearly 5½ years.⁵

Furthermore, unlike the case with WACY-TV, there is a technical basis for WFRV-DT seeking to modify its existing Channel 56 DTV allotment. WFRV-TV has a low VHF analog allotment (NTSC Channel 5) which may not be suitable for digital operation. If WFRV-DT were to convert its digital operation to its paired analog allotment at the end of the transition period, it may not provide a satisfactory digital signal. On the other hand, Station WACY-TV operates on NTSC Channel 32, which is more suitable for digital operation. Therefore, despite Ace's contention that Channel 50 should be reserved for digital use until all of the existing television stations in the Green Bay–Appleton market have in-core DTV allotments, Ace already has an in-core allotment upon which it may convert to digital operations at any time prior to the end of the transition period.

Ace's argument concerning its desire for an in-core digital allotment is a transparent attempt to disguise the fact that its comments have been filed for the anti-competitive purpose of attempting to preclude the commencement of a new full-power television service at Green Bay. Station WACY-TV is an affiliate of the United Paramount Network ("UPN").⁶ As indicated above, Station WACY-TV is licensed to the community of Appleton, which is approximately 30 miles southwest of Green Bay. More importantly, WACY-TV's transmitter is located only 17.4 kilometers (10.8 miles) away from the reference coordinates of the proposed allotment of Channel 50 at Green Bay. Thus, there will be a substantial overlap between the service contours of WACY-TV and the proposed

⁵ Green Bay 44 filed its application for a new NTSC station at Green Bay on September 20, 1996 (*see* File No. BPCT-19960920YF).

⁶ Appended hereto as Appendix B is a copy of the home page from Station WACY-TV's website reflecting that Station WACY-TV is a UPN affiliate.

NTSC facility at Green Bay. Ace is well aware that the proposed Channel 50 NTSC facility is likely to become an affiliate of one of the emerging new networks and thereby become a direct competitor with Station WACY-TV for audience and advertising revenue in the Green Bay–Appleton television market. Therefore, despite Ace's allegations about preserving Channel 50 for a potential in-core digital allotment, Ace's comments have been filed in this proceeding solely for the anti-competitive purpose of attempting to keep a new network affiliate out of the local television market which would substantially weaken WACY-TV's competitive posture.

III. Conclusion.

As demonstrated herein, the proposed allotment of Channel 50 to Green Bay, Wisconsin will not cause impermissible interference to Station WISC-DT, Madison. Moreover, there can be no dispute that the proposed NTSC facility at Green Bay would enable the Commission to help foster the development of new national networks by providing an additional competitive broadcast outlet in a top 100 television market⁷ with which to establish a primary affiliation.⁸ In addition, the allotment of Channel 50 to Green Bay would bring a new local television service to a substantial number of viewers in the

⁷ The Green Bay–Appleton market currently is the 69th television market. See *Broadcasting & Cable*, p. B-188 (2001).

⁸ The WB Television Network and UPN have explained to the Commission in a variety of proceedings that one of their primary challenges in establishing themselves as a nationwide network has been finding a sufficient number of stations with which to affiliate. See, e.g., Comments of The WB Television Network, *Establishment of a Class A Television Service*, MM Docket No. 00-10 (filed Feb. 10, 2000); Comments and Reply Comments of The Warner Bros. Television Network, *Review of the Commission's Regulations Governing Programming Practices of Broadcast Television Network and Affiliates*, MM Docket No. 95-92 (filed Oct. 30, 1995, Nov. 27, 1995); Reply Comments of The Warner Bros. Television Network, *Reexamination of The Policy Statement in Comparative Broadcast Hearings*, GC Docket No. 92-52 (filed Aug. 22, 1994); Comments of the UPN, *Review of the Commission's Regulations Governing Programming Practices of Broadcast Television Network and Affiliates*, MM Docket No. 95-92 at 21-22 (filed Oct. 30, 1995).

Green Bay area, provide an opportunity for new entry into the television broadcast industry,⁹ promote viewpoint diversity in the local television market, and increase competition in the local advertising market. Therefore, Ace's anti-competitive concerns regarding the proposed allotment of Channel 50 to Green Bay should be rejected.

WHEREFORE, in light of the foregoing, Green Bay 44, L.L.C. respectfully requests that the Commission ADOPT the proposal set forth in the *NPRM* and AMEND the NTSC Table of Allotments by substituting Channel 50+ for the existing Channel 44 allotment at Green Bay, Wisconsin.

Respectfully submitted,

Dickstein Shapiro Morin & Oshinsky LLP
2101 L Street, N.W.
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(202) 785-9700

Attorneys for
GREEN BAY 44, L.L.C.

By: 
Andrew S. Kersting

February 5, 2002

⁹ See *In the Matter of Reallocation of Television Channels 60-69, the 746-806 MHz Band*, 12 FCC Rcd at 22971 (Commission acknowledged that new NTSC stations would “help foster competition between networks” and “create opportunities for increased broadcast diversity and new entry.”).

APPENDIX A

Engineering Statement of Pete Myrl Warren

WES Broadcast Consultants.**DECLARATION**

I, Pete E Myrl Warren, III, declare and state that I am a Certified Broadcast Engineer, by the National Association of Radio and Television Engineers, and my qualifications are a matter of record with the Federal Communications Commission, and that I am an engineer in the firm of WES Broadcast Consultants and that the firm has been retained to prepare an engineering statement on behalf of Green Bay 44 LLC.

All facts contained herein are true to my knowledge except where stated to be on information or belief, and as to those facts, I believe them to be true. All Exhibits were prepared by me or under my supervision. I declare under penalty of perjury that the foregoing is true and correct.



Pete E Myrl Warren, III

Executed on the 1st day of February, 2002

**Engineering Statement
Green Bay, Wisconsin
Channel 50
Amendment to Proposed Rulemaking
By WES Broadcast Consultants**

The predicted interference to the maximized facilities of Station WISC-DT, Channel 50, Madison, Wisconsin (as authorized by Construction Permit File No. BPCDT-19991027ABG) (granted October 31, 2000) can be significantly reduced by lowering the ERP of the proposed Channel 50 NTSC facility at Green Bay, Wisconsin and rotating the station's directional antenna pattern.

The reduction in interference to Station WISC-DT can be accomplished by reducing the power of the proposed Green Bay NTSC facility in the direction of Station WISC-DT. As demonstrated in the attached Exhibit FLR-1 (an OET 69 Study), by reducing the ERP of the proposed Green Bay NTSC facility by 3 dB, which would give the proposed NTSC facility an ERP of 1 megawatt, and rotating the station's directional antenna pattern such that the null is placed in the direction of Station WISC-DT, Madison, the interference to WISC-DT would be reduced to 0.483%, which is within the 0.5% rounding tolerance.

As shown in the attached Longley-Rice field strength study (Exhibit LR-1), the reduction in power and change in the station's directional antenna pattern will enable the proposed Channel 50 NTSC facility to place an 80 dB contour over the entire community of Green Bay. The 64 dB, 74 dB, and 80 dB contours reflected in Exhibit LR-1 demonstrate that the power reduction and rotated directional antenna pattern will not have a negative impact on the proposed station's ability to serve the Green Bay community and the surrounding area.

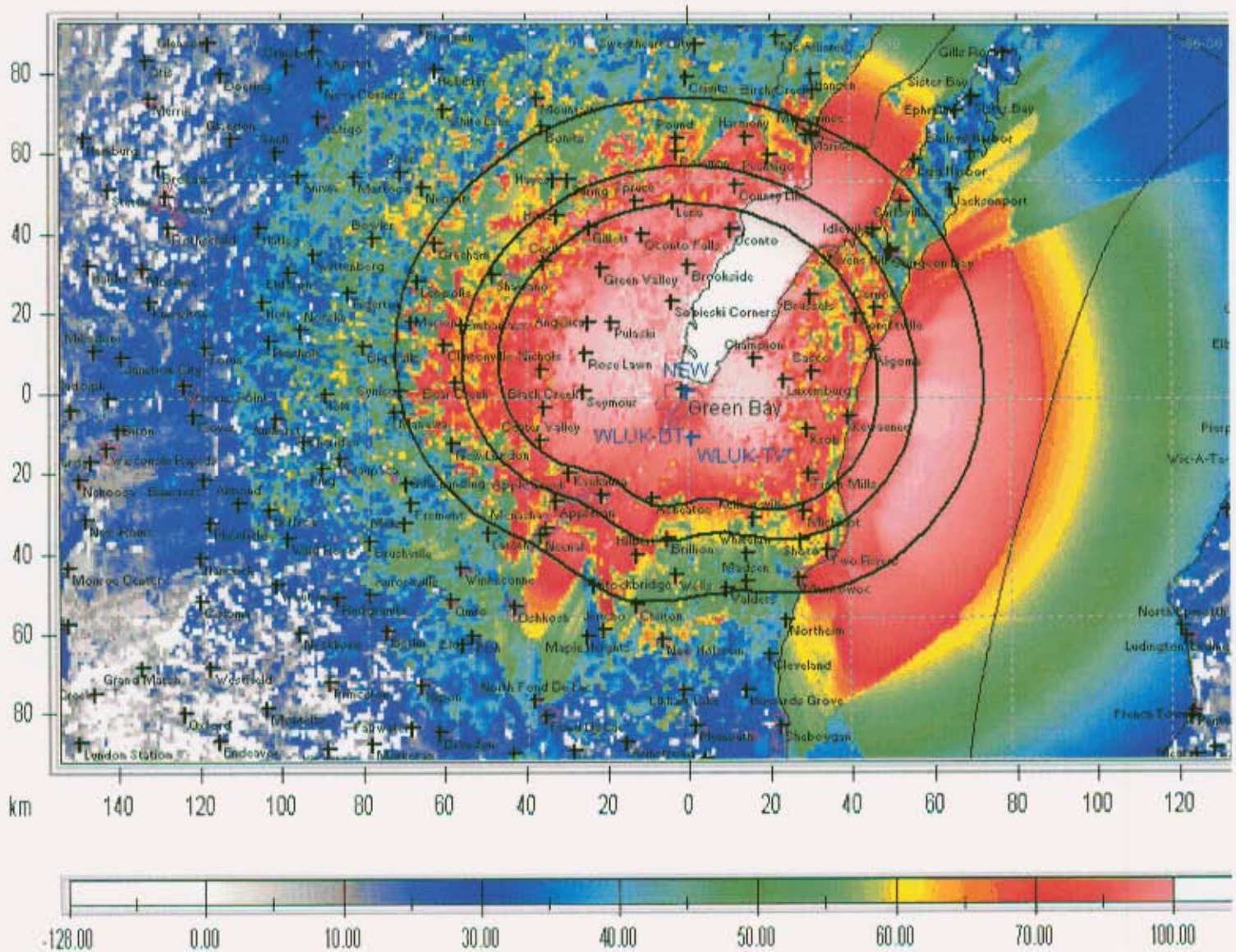
Exhibit FLR-1
Proposed Rulemaking
Greenbay, WI Ch 50
prepared by Wes, Inc. Broadcast Consultants

Ch 50 N LAT 44-30-48 W LON 88-00-24 ERP: 1,002.37 kW AGL:391m GMSL:182m RCMSL:573m

Callsign	City	Class	Status	ERP	Sep Type	Status	Dist	Prot	Clearance	D/U	Rx Gain	Rx F/B	Zone	Band	Ch#	Adj	Matrix	Svc Contour	Svc Strength
WISC-DT	MADISON	DTV	CP	603	D/M	Clean	203	194	9.2	2	10	14	1	UHF	50	Co	LR	F(50,90)	41

Population before the addition of Ch 50 to the database not affected by terrain losses: 1,435,588 persons
Population lost to NTSC before the addition of Ch 50: 61,510 persons
Population after the loss to NTSC: 1,374,078 persons
Population after the addition of Ch 50 to the database: 1,367,136 persons
Population lost to NTSC with Ch 50: 6,942 persons
Percentage of population lost with Ch 50: 0.483 %

Longley-Rice Field strength w/ 64, 74, & 80 db Contours Superimposed



APPENDIX B

Home Page from WACY-TV's Website



PN 32 MENU

- ▶ Home
- ▶ Employment Watch
- ▶ Popcorn Theater
- ▶ Sofa Cinema
- ▶ 2 Guys & A Movie
- ▶ Local Schedules
- ▶ UPN Schedules
- ▶ Sports
- ▶ UPN32 Race Car
- ▶ Contests
- ▶ Contact Us



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Welcome to the NEW UPN32 Where "It's All About U"

Welcome to the NEW UPN 32 website! Everything you

• Dip's Word of the Day Contest

College basketball comes back to UPN32! Catch these scheduled games:

DATE	TIME	VISITOR	HOME
01/02/02	7:00pm	Wisconsin	Iowa
01/09/02	7:00pm	Wisconsin	Penn State
01/16/02	7:00pm	Minnesota	Wisconsin
01/23/02	7:00pm	Wisconsin	Illinois
01/30/02	7:00pm	Wisconsin	Northwestern
02/02/02	7:00pm	Wisconsin	Michigan
02/06/02	7:00pm	Ohio State	Wisconsin
02/13/02	7:00pm	Wisconsin	Indiana
02/27/02	7:00pm	Michigan	Wisconsin

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CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of February, 2002, a copy of the foregoing
“REPLY COMMENTS” were hand delivered to the following:

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Federal Communications Commission
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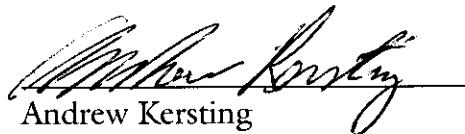
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